IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2231 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE SPECIAL LAND ACQUISITION OFFICER - Appellant(s)
Versus
ARVINDBHAI PRAHALADBHAI PATEL & 1 - Defendant(s)

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Appearance :
MS TANUJA N.KACHCHHI, AGP for Appellant
MR AJ PATEL for Respondent-Claimant

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 24/11/2006

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. The abovenumbered Appeal filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, is directed against the judgment and award dated April 15, 2005, rendered by the learned Assistant Judge and Special Judge (LAQ) Ahmedabad (Rural) in Land Acquisition Case No.521/1999, by which, the claimant has been awarded additional compensation at the rate of Rs.27-60/- per sq.mt. over and above the amount of compensation awarded to him by the Special Land Acquisition Officer at the rate of Rs.2.10 ps. per sq.mt., by his award dated June 24, 1999, for his acquired lands.

2. A proposal was received by the State Government from the Executive Engineer,

Construction Division No.16, Narmada Project Goraiya Branch Canal, Mehsana, to acquire the lands of village Madrisana, Taluka: Detroj, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On perusal of the said proposal, the State Government was satisfied that the lands of village Madrisana were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on July 8, 1997. The owner of the lands was thereafter served with notice under Section 4 of the Act and he opposed the proposed acquisition. After considering his objections, a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On scrutiny of the said report, the State Government was satisfied that the lands of village

Madrisana which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on February 6, 1998. The claimant was thereafter served with the notice under Section 9 of the Act for determination of compensation payable to him. The claimant appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated June 24, 1999, offered compensation to the claimant at the rate of Rs.2.10 ps. per sq.mt. The claimant was of the opinion that the offer of compensation made by the Special Land Acquisition Officer was

totally inadequate. Therefore, he preferred application under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just amount of compensation payable to him. Accordingly, Reference was made to the District Court, Ahmedabad (R), where it was registered as Land Acquisition Case No.521 of 1999.

3. On behalf of the claimant, claimant-Arvindbhai Prahladbhai Patel was examined at Ex.20. Over and above stating that the lands acquired were highly fertile and that he was earing the net profit of Rs.35,000/- to Rs.40,000/- per Vigha per year from the sale of agricultural produces, he produced previous award of the Reference Court relating to the lands of the same village at Ex.19. It was claimed by the said witness that the lands which were

acquired earlier and the lands which were subject matter of acquisition in the instant case were similar in all respects. Though this witness was cross -examined by the learned District Government Pleader on behalf of the appellant, nothing could be elicited so as to doubt his assertion that the lands of village Madrisana which were acquired in the instant case were similar in all respects to the lands which were acquired earlier from this very village.

4. On behalf of the appellant, witness Ghanshyamdas Omprakash Gupta, who was then discharging duties as Deputy Executive Engineer, was examined at Ex.21. In his cross-examination, he had to admit that he was not on duty when acquisition proceedings were initiated in the instant case. It was also admitted by him that the lands acquired were irrigated lands.

5. On appreciation of evidence adduced by the parties, the Reference Court in the instant case was of the opinion that the previous award of the Reference Court relating to the lands of this very village furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. Placing reliance on the previous award, the Reference Court has awarded additional amount of compensation at the rate of Rs.27-60 ps. per sq.mt. over and above what is awarded to the claimants by the Special Land Acquisition Officer, vide judgment and award dated April 15, 2005, giving rise to the instant Appeal.

6. This Court has heard Ms.Tanuja N.Kachchhi, learned Assistant Government Pleader for the appellant as well as Mr.A.J.Patel, learned counsel for the claimant, in this Appeal. This Court has also considered the paper-book supplied by the learned counsel for the claimant

which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

7. Though it was claimed by the witness for the claimant that the lands acquired in the instant case were highly fertile and that each claimant was earning income of Rs.35,000/- to Rs.40,000/- per Vigha per year from the sale of agricultural produces, no documentary evidence could be produced by the claimants to substantiate the said claim. The record does not indicate that the claimants had claimed enhanced compensation either on the basis of comparable sale deeds or on yield basis. What was relied upon by the claimants for claiming enhanced compensation was the previous award of the Reference Court relating to the lands of this very village which was produced at Ex.19. Exhibit 19 indicates that the lands of village Madrisana were acquired for the public purpose of

construction of Narmada Canal pursuant to publication of Notification issued under Section 4(1) of the Act in the official gazette on June 20, 1995. Therein, the Special Land Acquisition Officer, by his award dated September 30, 1996, offered compensation to the claimants at the rate of Rs.2.10 ps. per sq.mt. Feeling aggrieved, the claimants had sought references which were registered as Land Acquisition Case Nos.721/1998 to 724/1998. The Reference Court, on appreciation of evidence, awarded additional compensation to the claimants at the rate of Rs.23/- per sq.mt. over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.2.10 per sq.mt., by judgment and award dated August 31, 2004. Thus, Exhibit 19 indicates that by two different Notifications published under Section 4, two parcels of lands of the

same village were acquired for the same public purpose. It is well settled that previous award of the Reference Court, which has attained finality, can be relied upon for the purpose of determining the market value of the lands acquired from that very village subsequently. The record further shows that the previous award of the Reference Court dated August 31, 2004, rendered in Land Acquisition Case Nos.721/98 to 724/98 has been slightly modified vide judgment dated October 30, 2006, rendered in First Appeal Nos.2212/2006 to 2215/2006, by holding that the claimants in those cases would be entitled to compensation at the rate of Rs.25/- per sq.mt. and not at the rate of Rs.25.10 ps. per sq.mt. In view of the decision of the High Court, this Court is of the opinion that the claimant in this case also would be entitled to compensation at the rate of

Rs.25/- per sq.mt.

8. On re-appreciation of evidence, this Court finds that earlier, the lands of village Madrisana were acquired pursuant to publication of notification in the official gazette on June 20, 1995 whereas in the instant case, lands were acquired pursuant to publication of notification in the official gazette on July 8, 1997, and in view of the time gap of about two years, the claimant would be entitled to rise in price of lands at the rate of 10% p.a. If the compensation is computed on that basis, this Court is of the opinion that the finding recorded by the Reference Court that the claimant is entitled to in all compensation at the rate of Rs.29-70 ps. per sq.mt. cannot be termed as erroneous. This Court, on re-appreciation of the evidence, finds that correct findings of facts have been recorded by the Reference Court to which

settled principles of law have been applied. The learned Assistant Government Pleader could not point out any error in the impugned award so as to warrant interference of this Court in the instant Appeal. The appeal, therefore, which lacks merits, deserves to be dismissed.

9. For the foregoing reasons, the Appeal fails and is dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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